

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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INDYMAC BANK, F.S.B.,

Case No.: 07 CV 6865 (LTS)

Plaintiff,

-against-

NATIONAL SETTLEMENT AGENCY, INC.;  
STEVEN M. LEFF; RACHEL M. LEFF;  
RICHARD A. LEFF; JOHN DOES 1-100,

Defendants.  
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**MEMORANDUM OF LAW IN OPPOSITION OF PLAINTIFF'S  
ORDER TO SHOW CAUSE TO COMPELLING LANDLORD'S MANAGING  
AGENT TO DELIVER THE SECURITY DEPOSIT HELD ON DEPOSIT  
PURSUANT TO A COMMERCIAL LEASE DATED APRIL 2007.**

**CYRULI SHANKS HART & ZIZMOR LLP**

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**PRELIMINARY STATEMENT**

Landlord, 180 MADISON OWNERS, LLC ("Landlord"), and its managing agent, SITT ASSET MANAGEMENT, LLC ("Sitt"), respectfully submit this memorandum of law in opposition to the order to show cause of the plaintiff, INDYMAC BANK, F.S.B. ("Plaintiff"), seeking an order to have Sitt or Landlord: i) turn over to the U.S. Marshal all monies that it holds that belongs to or is owed to Steven M. Leff and/or National Settlement Agency, Inc. ("NSA") in connection with a written commercial lease dated April 2007 (the "Lease") between 180 Madison Owners LLC, as landlord, and NSA, as tenant or ii) swear out an affidavit that the Sitt is holding the security deposit for National Settlement Agency Inc. (less any amount owed to the Landlord) as the U.S. Marshal's agent pursuant to the August 16, 2007 Order of Attachment (the "Order of Attachment") heretofore entered in this matter in favor of Plaintiff.

It is respectfully submitted that this court should deny Plaintiff's instant order to show cause because NSA is not entitled to the return of any monies that it paid to the Landlord.

**STATEMENT OF FACTS**

The court is respectfully referred to the accompanying affidavit of Mary Jean Rose, the Director of Lease Administration for Sitt Asset Management, LLC, for a recitation of the relevant facts herein.

**SITT SHOULD NOT BE COMPELLED TO DELIVER  
ANY MONIES PAID BY NSA FOR THE OFFICE  
SPACE AT 180 MADISON**

The applicable rule at bar holds that:

For purposes of execution after judgment as well as attachment before judgment, the judgment creditor's (plaintiff's) right to a given item of property is deemed *coextensive with the same as the judgment debtor's (defendant's) interest in it*. The theory is that the judgment creditor steps into the shoes of the judgment debtor. Sochor v. International Business Machines, Corp., 90 A.D.2d 442, 446-7, 457 N.Y.S.2d 317, 320 (2d Dept. 1982). (Emphasis in original.)

As set forth in the accompanying affidavit of Mary Jean Rose, all of the payments made by NSA under the Lease have been, or can be, applied to NSA's arrears under the Lease.

Moreover, under New York law, Landlord has no obligation to mitigate any of the damages that may arise in the future under the terms of the Lease. Holy Properties Limited L.P. v. Kenneth Cole Productions Inc. 87 N.Y.2d 130, 637 N.Y.S.2d 964 (1995). Thus, even if the payments made through the date of NSA's eviction this month slightly exceed the amount owed through said date, NSA will certainly never be in a position to receive back the payments that it made to Landlord because of such future accruing rents.

Therefore, since NSA no longer has any interest in any of the monies that it has paid to the Landlord under the Lease, Plaintiff is not entitled to same under the terms of the Order of Attachment.

**CONCLUSION**

It is respectfully requested that Plaintiff's instant order to show cause be denied.

Dated : New York, New York  
January 18, 2008

CYRULI SHANKS HART & ZIZMOR LLP  
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